

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a right knee condition causally related to the accepted September 18, 2012 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ Appellant, then a 50-year-old automotive lead technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on September 18, 2012 as a result of stepping out of a vehicle while in the performance of duty.⁴ He established fact of injury, but on August 12, 2013 OWCP's Branch of Hearings and Review affirmed the denial of the claim because he failed to establish a causal relationship between the diagnosed right knee condition and the September 18, 2012 employment incident.⁵ Appellant subsequently appealed to the Board. In a decision dated July 25, 2014, the Board affirmed the hearing representative's August 12, 2013 decision.⁶ OWCP subsequently denied a request for reconsideration by decision dated November 13, 2014. Appellant, through counsel, timely requested reconsideration. In a March 25, 2015 decision, OWCP reviewed the merits of the claim, but denied modification. Appellant, through counsel, appealed to the Board. By decision dated October 20, 2015, the Board affirmed OWCP's March 25, 2015 decision.⁷ The Board found that appellant had not met his burden of proof to establish that his claimed right knee condition was causally related to the September 18, 2012 employment incident. The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference.⁸

On October 18, 2016 counsel requested reconsideration. In support of the request, he submitted an October 18, 2016 report from Dr. Michael Foreman, a family practitioner. Dr. Foreman indicated that he had reviewed appellant's medical records in order to determine whether causal relationship existed between his right knee injury and the September 18, 2012 work incident. He noted that appellant slipped while stepping out of a vehicle onto the front fork of a lift and fell approximately two feet downward, landing on a twisted right knee, which caused his joint to buckle and crack. Dr. Foreman found that appellant's past medical history included chronic, intermittent, and mild right knee pain and, according to his medical records, the condition was responsive to nonoperative measures. He reviewed two right knee magnetic resonance imaging (MRI) scans, dated March 30, 2010 and November 23, 2012, but did not

³ Docket No. 14-306 (issued July 25, 2014) and Docket No. 15-1301 (issued October 20, 2015).

⁴ Appellant stated that his foot slipped off the front rail of the lift and he twisted his right knee.

⁵ The hearing representative noted, *inter alia*, that there was evidence of a preexisting right knee condition, which dated back to at least March 2010.

⁶ Docket No. 14-0306 (issued July 25, 2014).

⁷ Docket No. 15-1301 (issued October 20, 2015). The Board's review included various diagnostic studies, as well as several medical reports from appellant's treating physician, Dr. Daniel Zelazny, a Board-certified orthopedic surgeon.

⁸ See *supra* note 3.

conduct a physical examination.⁹ Dr. Foreman opined that appellant's claim should be accepted for right knee lateral meniscus tear, lateral collateral ligament (LCL) sprain, and anterior cruciate ligament (ACL) sprain. He based his assessment primarily on appellant's two MRI scans and an article published in the *Journal of the American Academy of Orthopaedic Surgeons* (AAOS). Dr. Foreman opined that the mechanism and presentation described in the medical literature mirrored that described by appellant and his treating physician, and was further supported by the November 23, 2012 MRI scan findings. He also indicated that appellant's claim should be accepted for aggravation of right knee unilateral primary osteoarthritis, which he based on a December 1990 article published in *Seminars in Arthritis and Rheumatism*. Dr. Foreman explained that appellant possessed "two of the three risk factors associated with osteoarthritis of the knee, two being occupationally related." He opined that "repetitive wear" combined with the maximal axial load with torsion that occurred at work on September 18, 2012 resulted in an exacerbation of appellant's underlying arthritic condition. Dr. Foreman concluded that appellant's right knee conditions were directly caused and/or exacerbated by acute trauma sustained on September 18, 2012.

By decision dated January 4, 2017, OWCP denied modification of its prior decision, finding that Dr. Foreman's opinion was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 18, 2012 employment incident. The senior claims examiner found that Dr. Foreman based his opinion on a review of the medical record and various medical journals, but had not conducted his own physical examination.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.¹⁰

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹¹ The second component is whether the employment incident caused a personal injury.¹² An employee may establish that an injury occurred in the performance of duty

⁹ Dr. Foreman also noted having reviewed the Board's October 20, 2015 decision.

¹⁰ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

¹¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹³

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

OWCP accepted that the September 18, 2012 employment incident occurred as alleged, and also accepted that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident. The issue is whether appellant's right knee condition resulted from the September 18, 2012 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship.

Dr. Foreman's October 18, 2016 report is the only medical evidence received since OWCP's March 25, 2015 decision. He reviewed the medical evidence of record, including appellant's March 30, 2010 and November 23, 2012 right knee MRI scans, but he did not personally examine appellant. Dr. Foreman found that appellant's past medical history included chronic, intermittent, and mild right knee pain. He diagnosed right knee lateral meniscus tear, LCL sprain, and ACL sprain based on his review of the diagnostic studies and an article published in the *Journal of the AAOS*. Dr. Foreman opined that the mechanism and presentation described in the medical literature mirrored what had been described by appellant and his treating physician, and was further supported by the November 23, 2012 right knee MRI findings. He also diagnosed aggravation of unilateral primary osteoarthritis of the right knee based on an article published in *Seminars in Arthritis and Rheumatism*. Dr. Foreman opined that "repetitive wear" combined with the maximal axial load with torsion that occurred at work on September 18, 2012 resulted in an exacerbation of appellant's underlying arthritic condition. He concluded that appellant's right knee condition was causally related to the September 18, 2012 work incident.

The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹⁵ A temporal relationship alone will not suffice.¹⁶ Dr. Foreman's October 18, 2016 report did not include sufficient medical rationale explaining how the September 18, 2012 employment incident either caused or contributed to appellant's current right knee condition. A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition(s) and appellant's

¹³ Shirley A. Temple, 48 ECAB 404, 407 (1997).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ 20 C.F.R. § 10.115(e).

¹⁶ See *D.I.*, 59 ECAB 158, 162 (2007).

specific employment factor(s).¹⁷ The need for rationale is particularly important because the evidence indicates that appellant had a preexisting right knee condition.¹⁸ Additionally, Dr. Foreman relied on various medical journals in forming his medical opinion. The Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing a causal relationship between a claimed condition and factors of the employee's federal employment, as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁹ For the above-noted reasons, the Board finds that Dr. Foreman's October 18, 2016 report is insufficient to establish causal relationship between appellant's current right knee condition and the September 18, 2012 employment incident.

As appellant has not submitted any rationalized medical evidence to support that his claimed right knee condition is causally related to the September 18, 2012 employment incident, he has failed to meet his burden of proof to establish entitlement to FECA benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his right knee condition is causally related to the accepted September 18, 2012 employment incident.

¹⁷ *Victor J. Woodhams, supra* note 12.

¹⁸ *See supra* note 14.

¹⁹ *See D.E.*, Docket No. 07-27 (issued April 6, 2007).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board